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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 257 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?

No.

OPERATIONS RESEARCH (INDIA)LTD

Versus

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Appearance:

MRS SWATI SOPARKAR for Petitioner

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 23/01/98

ORAL JUDGEMENT

This petition is filed by Operations Research (India) Ltd. in order to get sanction and approval for the scheme of amalgamation of the petitioner company with MARG Marketing and Research Group Pvt.Ltd.

2. The petitioner transferor company is registered under the Companies Act 1956 and is having its registered office at Rameshwar Estate, Subhanpura, Baroda 390 007. The transferee company MARG Marketing and Research Group Pvt.Ltd. is also a company incorporated under the Companies Act 1956 having its registered office at 30th floor Centre one, World Trade Centre Complex, Cuffe Parade, Bombay 400 005.

3. The petitioner transferor company had earlier filed company application no.162 of 1997 and as per the order passed in that application on 7.5.97, the petitioner was directed to convene and hold meetings of the shareholders for getting approval to the amalgamation scheme after issuing necessary advertisement and similarly to obtain approval of the secured creditors. As per the said order, the petitioner had convened meetings of unsecured creditors and the unsecured creditors had approved and sanctioned the said scheme in the meeting held on 7.6.97. The petitioner transferor company had also convened the meeting of the shareholders and the shareholders had also approved the amalgamation scheme. Bank of Baroda is the only secured creditor of the transferor company the petitioner and Bank of Baroda has issued a certificate dated 12.5.97 giving its consent to the proposed amalgamation scheme.

4. After filing of this petition, necessary advertisements were issued in the local daily Gujarat newspaper and an English daily but nobody has come forward to raise any objection for the amalgamation scheme in question. Notices were also issued to the OL as well as Regional Director of Company Affairs. The OL has filed his report at page 29 on 17.11.97 and in the said report it has been clearly stated that the auditors had found on scrutiny of books of accounts and affairs of the company that the transferor company in question had not conducted any affair prejudicial to the interest of its members as well as public at large. In his report he does not raise any objection for the amalgamation scheme in question. No doubt the Regional Director of Company Affairs has filed his say dated 10.11.97 at page 77 and by the same he has raised two objections for the amalgamation scheme in question. It is most appropriate to mention here that the transferee company had also filed company petition no. 605/97 in the High Court of Bombay for getting the approval and sanction for the amalgamation scheme in question and from the Annexure-C on record at page 76 it is quite clear that the objections which the Regional Director of Company Affairs has raised same objections through the Registrar of

Companies, Gujarat State were ultimately withdrawn by the said said Registrar of Companies and the Regional Director of Company Affairs and High Court of Bombay was pleased to approve and sanction the amalgamation scheme in question by passing an order dated 11.12.97 in company application no. 605/97 of that Court. Therefore, in view of the said position, the objections raised by the Regional Director of Company Affairs really do not survive.

5. Now apart from the above aspect I proceed to consider the said objection of Regional Director of Company Affairs as I am of the view that it is the statutory duty of the court to satisfy itself that the amalgamation scheme will not be prejudicial not only to the shareholders of the companies i.e. transferor and transferee company but also to the public at large. Therefore, in that view of mine I proceed to consider the objection raised by the Regional Director of Company Affairs. The first objection raised by the Regional Director of Company Affairs is that the main objects are not at all mentioned in the Memorandum of Association of the transferor company in question. It seems that said objection is raised by the Regional Director of Company Affairs without carefully studying and perusing its record. The manager of the transferor company in question has filed his affidavit and in the said affidavit dated 21.1.98 this position is made quite clear by him. It has been mentioned in the said affidavit in para 4 that the Memorandum and Articles of Association in its original form were amended subsequently and said changes were carried out by a special Resolution as back as in 1987 and relevant Resolution and Form no.23 was filed with the Registrar of Companies as per Annexure.A. It seems that said Annexure A was not at all taken into consideration by the Regional Director of Company Affairs while raising said objection. Therefore that objection thus does not service. The second objection raised by the Regional Director of Company Affairs is regarding ratio of the shares allotted in the amalgamation scheme. In my opinion, said objections regarding the correctness of ratio of exchange of shares, is to be raised by the shareholders of the transferor company as well as transferee company, if there be any. If in their commercial wisdom the shareholders of the transferor company as well as the transferee company accept the said ratio of shares, it would not be open for the Regional Director of the Company Affairs to raise objection on that ratio. At the most that contention could be raised by secured creditors as well as unsecured creditors who are likely to be affected by the same. But in this case

the secured creditors as well as unsecured creditors have not raised any objection in the ratio of the shares. It is also quite obvious that no such objection was also raised in the petition filed by the transferee company for getting approval and sanction for the amalgamation scheme in question. In my opinion, this court also cannot question the commercial wisdom of the shareholders, if the shareholders, with their open eyes are accepting the ratio of exchange of shares. This aspect was considered by the Apex Court in the case of Miheer H. Mafatlal vs. Mafatlal Industries Ltd. reported in AIR 1997 SC 506 and in para 39 on page no. 530 and 531 it has been observed by the Apex Court as under:

"...It has also to be kept in view that which exchange ratio is better in the realm of commercial decision of well informed equity shareholders. It is not for the Court to sit in appeal over this value judgment of equity shareholders who are supposed to be men of the world and reasonable persons who know their own benefit and interest underlying any proposed scheme. With open eyes 40% of the majority shareholders were financial institutions who were supposed to be well versed on the aspect of valuation of shares. They had no objection to the exchange of 2 shares of transferee-company for 5 shares of transferor company. As stated earlier it was a sort of a package duly considering all imponderables and implicit factor deciding whether to approve the Scheme of Amalgamation or not. The exchange ratio was only one of the items. They thought it fit in their commercial wisdom to accept the Scheme as a whole along with the exchange ratio presumably in expectation of better profits in years to come when the amalgamated companies would operate and when there would be according to the shareholders better prospects of earning greater dividends. They willingly agreed to give in exchange two shares of transferee-company for five shares of transferor - company and made them available to the shareholders of the transferor company. The appellant was representing only 5% dissenting shareholders and his objection was almost a voice in the wilderness which did not appeal to the majority of his brother shareholders. Shri Shanti Bhushan, learned senior counsel for the appellant in this connection invited our attention to the observations of the Division

Bench in its judgment at page 375 wherein it has been observed that "if one were to examine the exactitude of exchange ratio that may be offered fairly on the arithmetic scale by taking into consideration various details, there is some force in what were suggested by Mr. B.R.Shah on behalf of the appellant. However, keeping in view the scope of enquiry which the Court is required to undertake and with whose findings we are concerned, it will not be permissible for ius in law to undertake this exercise in the facts and circumstances of present case in absence of bonafides" We fail to appreciate how this observation can be of any avail to learned senior counsel for the appellant as all that the Court wanted to suggest was that even assuming that some another exchange ratio can be suggested to be better one, it was for the equity shareholders who acted bonafide in the interest of their class as a whole to accept even a less favourable ratio considering other benefits that may offset such less favourable ratio once an amalgamation goes through. We wholly concur with this view. In this connection we may also refer to a decision of Maughm, J. in Re. Hoare & Co. (No.2) case(1933) ALLER 105 wherein it was laid down that where statutory majority had accepted the offer the onus must rest on the applicants to satisfy the Court that the price offered is unfair. In this connection following pertinent observations were made by the learned Judge.

"The other conclusion I draw is this X X X X X

the Court ought to regard the scheme as a fair one inasmuch as it seems me impossible to suppose that the court ought to regard the scheme as a fair one inasmuch as it seems me impossible to suppose-that the Court, in the absence of any strong grounds, is to be entitled to set up its own view of fairness of the scheme in opposition to so very large a majority of shareholders who are concerned. Accordingly, without expressing a final opinion on the matter because there may be special circumstances in special cases, I am unable to see that I have any right to order otherwise in such a case as I have before me, unless it is affirmatively established that notwithstanding the views of a very large majority of shareholders, the scheme of unfair."

We may also refer to a decision of Gujarat High

Court (or Madras High Court?) in Kamala Sugar Mills Limited (1984)) 55 Company cases p. 308 dealing with an identical objection about the exchange ratio adopted in the Scheme of Compromise and Arrangement. The Court observed as under:

"Once the exchange ratio of the shares of the transferee-company to be allotted to the shareholders of the transferor company has been worked out by a recognised firm of chartered accountants who are experts in the field of valuation and if no mistake can be pointed out in the said valuation, it is not for the Court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies or to say that the shareholders in their collective wisdom should not have accepted the said exchange ratio on the ground that it will be detrimental to their interest."

These observations in our view represent the correct legal position on this aspect..."

Thus I hold that the objections raised by the Regional Director of Company Affairs also do not survive.

6. Therefore, in view of all the above considerations I hold that there are no grounds or circumstances to refuse to grant approval and grant the amalgamation scheme in question. I therefore, accordingly allow this petition and I approve and sanction the amalgamation scheme in question by which the petitioner transferor company vis. Operations Research(India)) Ltd. is to merge with MARG Marketing and Research Group Pvt.Ltd. The petition stands disposed of with no order as to costs.

(S.D.Pandit.J)